IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

W.P. 2564 (M/S)/01, decided on

M.L. Kapoor

Vs.

P.O. Labour Court & others

A.F.R. (Approved for reporting)
~~Not approved for reporting~~

Date 5/8/03

Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Writ Petition No. 49234 of 1999-old number
Writ Petition no.2564 (M/S) of 2001-new number

Mohan Lal Kapoor---------- Petitioner

Versus

Presiding Officer Labour Court and others---------- Respondents

Hon'ble M.M. Ghildiyal J.

Heard Sri Pankaj Miglani learned counsel for the petitioner and Sri B.D.Kandpal learned Standing Counsel.

After transfer of this writ petition from Allahabad High Court notices were sent to the respondent no.2 but no one has put in appearance on behalf of respondent no.2.

By means of this writ petition the petitioner has challenged the award dated 15.07.1998 passed by the Presiding Officer, Labour Court, Meerut confirming the order dated 06.10.1993 of termination of the petitioner. The Labour Commissioner referred the following matters in dispute to the Labour Court for adjudication:-

> ''क्या सेवायोजकों व्दारा अपने श्रमिक श्री मोहन लाल कपूर पुत्र श्री एस0एल0 कपूर की सेवायें दिनांक 6–10–93 को समाप्त किया जाना उचित तथा /अथवा वैधानिक है? यदि नहीं, तो सम्बन्धित श्रमिक किस हितलाभ/अनुतोष (रिलीफ) पाने का अधिकारी है तथा किस विवरण व तिथि सहित?

The workman filed written statement stating therein that he joined the services of M/s Sewa Samiti (registered) Haridwar with effect from 1.4.1988 as Bhawan Prabandhak. Though his work and conduct was satisfactory, but for some irregularities committed by the petitioner an explanation was called by the employer. However without conducting proper enquiry, his services were terminated with effect from 6.10.1993. The employer has pleaded in his objection that the respondent No.2 is a religious and charitable institution and it does not come within the definition of "Industry" and as such the reference/order is bad in law. It has further been pleaded by the employer that the petitioner was appointed as a Manager. His work was in the capacity of Manager and as such he was not a workman as defined under Industrial Disputes Act 1947 (hereinafter referred to as "the Act"). The employer has further pleaded that there was a proper enquiry

against the conduct of the petitioner and his services were terminated after proper enquiry after giving him full opportunity.

The Labour Court has decided three questions:

1- Whether the employer M/s Sewa Samiti (registered) Haridwar is an Industry as defnined U/S 2 (K) of the Act and has given finding to the effect that M/S Sewa Samiti (registered) Haridwar comes under the definition of Industry. From the pleadings it is true that there are number of other activities run by the Sansthan which can be called systematic activities. The only factors, which will have to be considered for deciding are whether the Sansthan is an "industry" or not, are whether there is a systematic activity which is organized by co-operation between the employer and the employees for production or distribution of goods calculated to satisfy human wants. The activities of Sansthan may be carried out with the philanthropic idea, but it cannot be forgotten that the workers working have not exactly come for rendering their services with the religious outlook. They are purely servants to earn their wages. The Apex Court has also held that merely because the earnings are spent for charities, it does not change the fate of the workers who are unconcerned about the destination of the profits. The workers in such industries are treated like any other workmen in any other industry. Thus there is no error in the findings of the Labour Court that M/s Sewa Samiti (Registered) Haridwar comes under the definition of "industry".

2- The second point discussed by the Labour Court is whether the petitioner is a workman as defined U/S 2(z) of the Act and has held that since the petitioner was a retired person of old age, he was made incharge of the building (Dharmshala) which is used to be given to the pilgrimages on rent and he has to maintain the record for the same. At the time of termination the petitioner may have attained the age of 60 years but since there was no age of retirement. Further there was no settlement arrived at between the employer and the workman that he will be retired at a particular age. The employer cannot take the benefit of plea that the workman has already completed the age of 60 years. The Labour Court has held that the work does not amount to under the definition of workman, but was simply a clerical work and

as such was a workman within the definition as given under the Act. No doubt the petitioner was appointed as a Bhawan Prabandhak but only by this designation he cannot be said to have been performing the duties of a Manager and is not a workman. For deciding the issue whether the petitioner is workman or not it is proper to see what are the duties to be performed by the workman and his salary etc. From the pleadings it is clear that the work being performed by the petitioner was of the nature of clerical and he was getting a salary of Rs. 500.00 per month. Thus, it cannot be said that the petitioner was performing the duties of managerial nature and does not come within the purview of the definition of workman.

3- The third point considered by the Labour Court was in respect of whether the services of the workman was illegally terminated by the employer. While discussing the matter, the Labour Court has held that the workman has purposely suppressed material facts in his written statement. He has not mentioned that he was a retired person and had not disclosed his age at the time of his appointment as Bhawan Prabandhak. Moreover the appointment of workman was purely a temporary appointment at a monthly salary of Rs. 500-00. According to the affidavit filed by the petitioner before the Labour Court the age of the petitioner was mentioned as 62 years. Considering these facts the Labour Court has held that it was purely a temporary appointment at a monthly salary of Rs. 500-00. He was engaged on a meager salary of Rs. 500/- per month and was not even paid minimum of wages under the Minimum of Wages Act as fixed by the State of Uttar Pradesh from time to time.

The Labour Court has further held that the petitioner does not hold any lien in the service. There were also no terms settled between the parties that the workman had a right to leave his post at any time at his will. Considering these facts the Labour Court held that the termination of the services of the workman without observing the principles of natural justice cannot amount to retrenchment of the workman. After perusal of the record, it is clear that the termination order dated 6.10.1993, itself speaks that the petitioner was terminated on the basis of the report of enquiry committee. The petitioner himself in his statement before the labour Court has stated

that an explanation was called from him by the respondent No. 2 and he has submitted his explanation and without conducting proper enquiry his services were terminated. Thus it is clear that there was an enquiry on the basis of which the services of the petitioner were terminated. In the writ petition the petitioner has pleaded that the order of termination is bad in law because there was no compliance of section 6 (N) of the Act. In case any workman is terminated after enquiry section 6 (N) of the Act will have no application. From the pleadings of the petitioner as well as of respondents it is clear that domestic enquiry was conducted by the respondent No.2. There was pleading before the lower Court and the termination order also mentions that an enquiry was conducted but the Labour Court has not given findings on the question whether the enquiry was proper or not. From the pleadings it appears that no proper enquiry was conducted by the respondent No. 2.

In view of the above, I direct the Labour Court Dehradun, which has not the jurisdiction in the matter to decide the aforesaid issue afresh. While deciding the issue the Labour Court shall not be prejudice by the observations made in the body of this judgment.

With these directions, the matter is remanded back to the Labour Court Dehradun for deciding the issue afresh after giving full opportunity to the parties whether the petitioner was terminated on the basis of enquiry report or whether the enquiry was conducted property or not.

With these directions the writ petition is disposed of finally. The case is pending since long and the petitioner is about 74 years old, the Labour Court Dehradun is directed to decide the matter within a period of four months from the date of production of certified copy of this judgment.

Dt: Aug. 5, 2003 **(M.M. Ghildiyal, J.)**

MPS